

### **REMARKS**

The foregoing amendments and these remarks are in response to the Office Action dated January 21, 2003. This response is timely filed.

At the time of the Office Action, claims 1-3 and 6-17 were pending in the application. In the Office Action, claims 1-3, 6-7, 9 and 14-17 were rejected under 35 U.S.C. §102(e), and claims 1-3 and 6-17 were rejected under 35 U.S.C. §103(a). In addition, claims 1-3 and 6-17 were rejected under 35 U.S.C. §112, first paragraph.

#### **I. Rejection under 35 U.S.C. §112, first paragraph**

The pending claims were rejected under 35 U.S.C. §112, first paragraph, based upon an assertion that claims 1 and 10 contained new matter. Applicant has amended claims 1 and 10 to overcome this rejection. In particular, claims 1 and 10 now recite that the coating can degrade and release onto the skin of a wearer monomers and/or oligomers when the cosmetic powder is applied to the skin. Support for the claim language is provided on page 3, lines 7-19, of Applicant's specification. Withdrawal of the §112 rejection is believed appropriate, and is therefore respectfully requested.

#### **II. Rejection under 35 U.S.C. § 102(e) and 35 U.S.C. §103(a)**

Prior to discussing the cited prior art, a brief review of the features of claim 1 is appropriate. Claim 1 relates to a cosmetic powder to which a coating is associated. The powder comprises one or more of the following: excipients, pigments, and spherical and non-spherical silica. The coating comprises at least one polymer or co-polymer belonging to the poly alpha hydroxy acids family, whereby the alpha hydroxy acid polymer or copolymer can degrade and release onto the skin of a wearer monomers and/or oligomers when the cosmetic powder is applied to the skin. Claim 10 relates to a process for preparing the cosmetic powder, in which the alpha hydroxy acid polymer or copolymer can degrade and release onto the skin of a wearer monomers and/or oligomers when the cosmetic powder is applied to the skin.

Turning now to the rejections on art, claims 1-3, 6-7, 9 and 14-17 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,187,439 to Elwakil

("Elwakil"). In addition, claims 1-3 and 6-17 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,120,787 to Gustafsson ("Gustafsson"). Applicant submits that claims 1 and 10 are not taught or suggested by the prior art. In particular, the prior art does not disclose or suggest the use of alpha hydroxy acid polymer or copolymer to degrade and release onto the skin of a wearer monomers and/or oligomers when the cosmetic powder is applied to the skin.

In stark contrast to the pending claims, Elwakil discloses the use of encapsulated pigments that are suitable for use in connection with printing ink, and magnetic recording systems such as audiotapes, videotapes and magnetic storage disks. Applicant notes that one of ordinary skill in the art would not look to the disclosure of Elwakil, which relates to a field quite different from that of cosmetics, to develop that which is set forth in the pending claims.

Additionally, hydroxy acid is present in Elwakil for a purpose that is quite different from the purpose of its presence in the pending claims. Specifically, in Elwakil, "upon cooling the system, the shell wall materials solidify and encapsulate the particles with a (hydrophobic) shell" (see column 12, lines 33-35). Notably, the hydroxy acid of Elwakil is incorporated into a solid shell, and cannot degrade and release onto the skin of a wearer monomers and/or oligomers when applied to the skin. In contrast, in the pending claims, the hydroxy acid polymer or copolymer can degrade and release onto the skin of a wearer monomers and/or oligomers when the cosmetic powder is applied to the skin.

Turning now to the disclosure of Gustafsson, Applicant notes that it teaches parenterally administrable sustained release microparticles having a shell of biodegradable polymers such as  $\alpha$ -hydroxy acids. The shell requires the use of stabilizing agents, plasticizing elements and additives for release control. The shell is biodegradable over a period of days or weeks, and is designed to break down in the body after injection to release a biologically active substance entrapped in the microparticles. Notably, however, Gustafsson does not disclose or suggest a cosmetic powder that uses alpha hydroxy acid polymer or copolymer to degrade and release onto the skin of a wearer monomers and/or oligomers when applied to the skin. As noted above, such features are recited by claims 1 and 10.

For the foregoing reasons, Applicant submits that neither Elwakil nor Gustafsson teaches or suggests a cosmetic powder having the features of claim 1, or a method of preparing a cosmetic powder as recited by claim 10. Withdrawal of the rejections are therefore respectfully requested.


### III. Conclusion

Based upon the foregoing, claims 1 and 10 are believed to be in condition for allowance. Claims 2, 3, and 6-17 are also believed to be allowable because of their reliance on allowable base claims, and because they contain features not taught or suggested by the prior art.

Applicant has made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. Nevertheless, Applicant invites the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. In view of the foregoing remarks, Applicant respectfully requests reconsideration and prompt allowance of the pending claims.

Respectfully submitted,

Date: 4-21-03

  
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Docket No. 1610-82

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of AVALLE

Application No. 09/800,463

Filed: March 08, 2001

For: COATED COSMETIC POWDER

Examiner: WILLIS, M.

Group Art Unit: 1617

**ATTACHMENT TO AMENDMENT SHOWING MODIFICATIONS****CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this correspondence is being transmitted to the Commissioner for Patents, Washington, DC 20231, via facsimile (fax no. 703-872-9307) on 4-21-03.

  
Mark D. Passler Reg No. 40,764

Commissioner for Patents  
Washington, D.C. 20231

Sir:

In accordance with 37 CFR §1.121, the modifications made to the application are as follows:

**IN THE CLAIMS**

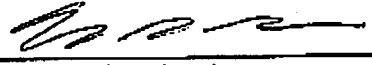
- 1           1. (Amended) A cosmetic powder to which a coating is associated wherein:  
2           said powder comprises at least one of the group consisting of excipients, pigments,  
3           and spherical and non-spherical silica; and  
4           said coating [includes] comprises at least one polymer or co-polymer belonging to  
5           the poly alpha hydroxy acids family, whereby said [coating] alpha hydroxy acid polymer or  
6           copolymer can [interact with] degrade and release onto the skin of a wearer at least one of  
7           monomers and oligomers when said cosmetic powder is applied to the skin.  
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{WP130702;1}

1 10. (Amended) A process for the preparation of a cosmetic powder comprising the  
2 steps of:  
3 preparation of a powder phase, wherein said powder comprises at least one of the  
4 group consisting of excipients, pigments, and spherical and non-spherical silica;  
5 preparation of an alpha hydroxy acids polymer or co-polymer phase;  
6 mixture of said powder phase and of said alpha hydroxy acids polymer or  
7 co-polymer phase with a solvent in slurry or spray; and  
8 evaporation of the solvent, to form an alpha hydroxy acids polymer or co-polymer  
9 coating on said powder, whereby said coating can [interact with] degrade and release  
10 onto the skin of a wearer at least one of monomers and oligomers when said cosmetic  
11 powder is applied to the skin.

Respectfully submitted,

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